

Austin Update

2021 Legislative Session – What Next?

June 20 – Last day for Governor Abbott to sign or veto bills.

The Legislature will return for a planned fall Special Session (September or October) to draw redistricting maps and determine the allocation of \$16 billion in federal COVID-19 funds. Governor Greg Abbott has indicated there will be another special session beforehand on the elections bill, Senate Bill 7, bail system reform legislation and other issues he will announce later. Previously, Lt. Governor Dan Patrick asked the Governor to call a special session to address legislation that would ban transgender students from playing on sports teams based on their gender identity, prevent local governments from using taxpayer funds for lobbyists and punish social media companies for "censoring" Texans based on their political viewpoints. Governor Abbott has expressed openness to the idea of adding to a special session list legislation to address direct ratepayer relief for residential power customers after the February winter weather crisis, legislation Lt. Governor Patrick also pushed hard for during the regular session.

Later this week the Texas Municipal League will release a complete summary of bills passed during the Regular Session that are of interest to cities. In the meantime, below are initial highlights of bills that are of interest to Galveston:

SIGNED BY THE GOVERNOR

HB 1118 (Capriglione) State agency and local government cybersecurity training requirements. Local employees, elected and appointed officials who have access to a local government computer system and use a computer to perform at least 25 percent of their required duties are covered by state cybersecurity training requirements. Non-compliant individuals may be denied access to the local government's computer system or database. When applying for state grant funding, a local government must submit a written certification (as prescribed by the Texas Department of Information Resources) of the local government's compliance with cybersecurity training requirements. Should the local government fail to submit the certification or otherwise be non-compliant, the local government is required to repay the grant award to the state and is barred from applying for another grant for two years. *Effective immediately.*

HB 1900 (Goldman) "Defunding" Cities. Municipalities with a population over 250,000 adopting budgets that "defund" municipal police departments will lose their annexation powers for 10 years and any area annexed by a defunding city in the past 30 years can vote to dis-annex from the city. Under the bill, a freeze on property tax revenues will be placed on defunding cities. The bill authorizes the state to withhold sales taxes collected by a defunding city and give it to the Texas Department of Public Safety to pay for the cost of state resources used to protect residents of a defunded municipality. *Effective September 1, 2021.*

SB 1225 (Huffman) Temporary suspension of Texas Public Information Act (TPIA) requirements. Allows a governmental body to suspend the applicability of TPIA requirements for an initial suspension period once per catastrophe. A "catastrophe" is defined as an occurrence that directly interferes with the ability of a governmental body to comply with TPIA

requirements, but does not include when staff are required to work remotely and can access requested information. A governmental body may extend one time an initial suspension period for not more than seven (7) consecutive days. However, a combined suspension period for a governmental body may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe. The bill requires a good faith effort to continue to responding to public information requests to the extent staff have access to requested information when administrative offices are closed and staff are required to work remotely. Failure to respond may constitute conditions in which a requestor or the attorney general is authorized to file suit for a court order. Effective September 1, 2021.

SB 1448 – TWIA Legislative Oversight Board and Rates – The bill continues the windstorm insurance Legislative Funding and Funding Structure Oversight Board, requires legislative recommendations report due to the governor, lieutenant governor, and speaker of the house no later than January 1, 2023; and establishes that a TWIA premium rate increase requires a two-thirds vote of the board of directors to approve the new rate. Effective September 1, 2021

SB 58 (Zafferini) - Cloud computing services – The bill provides that cloud computing services are personal property for which the governing body of a governmental agency may contract under the Public Property Finance Act. Effective immediately.

SENT TO THE GOVERNOR – The following bills have not yet been signed.

SB 1 – 2022-23 Biennium Budget. The Texas Legislature’s two-year, roughly \$248 billion state budget is headed to the governor’s desk. Governor Abbott is granted the authority to veto individual line items he objects to. As passed by the Legislature, SB 1 would spend over \$116 billion in general revenue and does not tap into the state’s Economic Stabilization Fund (i.e. rainy-day fund). The \$116 billion matches the comptroller’s most recent projection for state funds available for the next biennium and is an increase of \$3 billion from the prior estimate. The approved \$248 billion in SB 1 is about a \$13.5 billion decrease from the 2020-21 budget cycle, due largely to federal funding for coronavirus relief. With passage of SB 1160 and the creation of the Gulf Coast Protection District, the budget appropriates \$200 million for FY 2022, contingent upon the receipt of federal funds in the same amount elsewhere in the budget. SB 1 maintains the current biennium budget language for the Texas Department of Transportation (TxDOT) Rider #23 protects the availability of state funds for rural and small urbanized area transit systems to leverage federal dollars for operations and capital needs.

SB 1160 (Taylor) Gulf Coast Protection District – The Gulf Coast Protection District is created to act as the non-federal sponsor for the storm surge suppression system project the US Army Corps of Engineers (USACE) plans to submit in the completed Texas Coastal Study and Chief’s Report to Congress. The District is governed by an 11-member Board of Directors. The commissioners courts for the five (5) participating counties will each appoint a director. The Governor will appoint the remaining (6) six members: two (2) additional directors for Harris County; one (1) director for a municipality in the District; one (1) director to represent ports; one (1) director to represent industry; and one (1) director to represent environmental concerns. Each board member must reside in the district territory. The bill prohibits a majority of board members from residing in one county. The district must hold an election to obtain voter approval before

imposing a property tax (capped at five cents on each \$100 valuation) or issue bonds payable from property taxes. The District, without an election, may issue bonds, notes or other obligations secured by revenue other than property taxes. While this bill creates a mechanism to facilitate the Coastal Texas Study and Sabine to Galveston projects, it is not endorsing a specific design element. Construction will be handled by the USACE and design will continue to be refined as the USACE works with the locals through the design and build process. Effective immediately, unless vetoed by the Governor.

SB 1438 (Bettencourt) Effect of a disaster on the calculation of property tax rates. The current law three-year property tax disaster exception to the 3.5 percent cap on the voter-approval rate (VAR) continues for communities impacted by disaster, but with the added requirement that at least one person is granted a temporary exemption for qualified property damaged by disaster (previously this temporary exemption was a local option). In addition, the bill makes the following revisions when calculating the VAR:

- City's VAR in first year after the city qualifies for disaster calculation is reduced by the "emergency revenue rate."
- The emergency revenue rate is calculated using the following formula: Emergency Revenue Rate = [(Last year's adopted tax rate – Adjusted voter-approval tax rate) x Last year's total value] / (Current total value – New property value)
- In the formula above, "adjusted voter-approval tax rate" is the VAR calculated for that tax year, determined as if the city adopted the 3.5 percent VAR every year during disaster calculation, even though the city was authorized to go up to 8 percent. There's an exception if the city's adopted rate was approved at a rollback election.

In summary, in the first year a city calculates a normal 3.5 percent VAR following a disaster period of up to 3 years when the city could calculate an 8 percent VAR, the city's 3.5 percent VAR is lowered to the VAR that the city would have had if the disaster never occurred *and* if the city went up to the 3.5 VAR in each of the "disaster" years. Effective immediately, unless vetoed by the Governor.

HB 1869 (Burrows) Definition of "debt" for purposes of calculating ad valorem tax rates. The bill modifies the definition of "debt" for purposes of the debt service property tax rate calculation to include: debt approved at an election; debt to finance certain infrastructure and equipment (even if not first approved by the voters); refunding bonds; emergency anticipation notes; and use of Certificates of Obligation (COs) for water and wastewater projects, and several other amendments beneficial to cities. Effective September 1, 2021.

SB 3 (Schwertner) Responses to weather emergencies and power outages – Mandates the weatherization of power plants; create a statewide emergency alert system; shore up communication among industry participants; and designate key gas facilities as "critical" so their power wouldn't be unintentionally turned off during crises. Companies will pay the costs to equip their power plants to withstand extreme weather. The weatherization upgrades likely will not be required until 2022 at the earliest. The legislation did not set specific deadlines for gas companies to weatherize their equipment. Specific concern for Galveston is the provision that requires an "affected utility" to do the following: 1) ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per

square inch, or at a water pressure level approved by the Texas Commission on Environmental Quality (TCEQ), as soon as safe and practicable following the occurrence of a natural disaster; and 2) adopt and submit to TCEQ for its approval an emergency preparedness plan that demonstrates the utility's ability to provide those emergency operations and a timeline for implementing the plan. Effective immediately, unless vetoed by the Governor.

SB 24 (Huffman) Hiring procedures for law enforcement agencies. For hiring on or after January 1, 2022, the Texas Commission on Law Enforcement will provide forms and procedures law enforcement agencies must follow when hiring a person licensed as a law enforcement officer. Before hiring, a law enforcement agency must submit confirmation to TCOLE that the following information was reviewed: 1) personnel files and other employee records from each previous law enforcement agency employer, including the employment application submitted to the previous employer; 2) employment termination reports and service records maintained by TCOLE; 3) proof the person meets minimum qualifications for enrollment in an applicable TCOLE training program; 4) a military veteran documentation or other military discharge record; 5) criminal history record information; 6) information on pending warrants as available through the Texas Crime Information Center and the National Crime Information Center; 7) motor vehicle operator and driving record documentation from the Department of Public Safety; 7) proof of U.S. citizenship; and 8) information on the person's background from at least three personal references and at least two professional references. Effective September 1, 2021.

HB 2073 (Burrows) Quarantine leave for fire fighters, police, detention officers, and emergency medical technicians. The bill requires political subdivisions to provide paid quarantine leave to fire fighters, peace officers, and emergency medical technicians who may have been exposed to a communicable disease while on duty. Requires that a paid quarantine leave policy provide: 1) all employment benefits and compensation, including leave accrual, pension benefits, and health benefits for the duration of the leave; and 2) reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation. Political subdivisions are prohibited from reducing sick leave, vacation, holiday, or other paid leave balances in connection with paid quarantine leave taken. Effective immediately, unless vetoed by the Governor.

SB 69 (Miles) Chokeholds Prohibited – Prohibits a peace officer from intentionally using a choke hold, carotid artery hold, or similar neck restraint in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person. Requires an officer to intervene to stop or prevent another officer from using excessive force. Effective September 1, 2021

HB 1925 (Capriglione) Prohibitions on homeless camping in public places. Renders camping in an unapproved public place a Class C misdemeanor, punishable by a fine of up to \$500. Cities may not opt out or discourage enforcement of this ban. Local camping bans equivalent to what is outlined in the bill are not affected. Cities require approval from the Texas Department of Housing and Community Affairs before public parks could be used as homeless encampment sites, and these rules would apply retroactively. Under the bill, law enforcement officers should redirect homeless persons to available local resources such as shelters or nonprofit groups before or at the time they issue a citation. The bill does not prohibit a local policy that encourages

diversion or a provision of services in lieu of citation or arrest. The bill provides for injunctive relief brought by the attorney general against a local entity prohibits or discourages enforcement of any public camping ban. Local entities found to have intentionally violated this public camping ban are prohibited from receiving state grant funds in the state fiscal year following the final judicial determination. Effective September 1, 2021.

HB 3898 (Anchia) Funding of public retirement systems. Requires a public retirement system governing body and its associated governmental entity to: 1) jointly develop and adopt a written funding policy that details a plan for achieving a funded ratio of the system that is equal to or greater than 100 percent; 2) revise the policy to reflect any significant changes to the policy, including changes required as a result of formulating and implementing a funding soundness restoration plan; and 3) post a copy of the most recent edition of the written funding policy on a public available website no later than the 31st day after the policy or change is adopted. The written funding policy must outline any automatic contribution or benefit changes designed to prevent having to formulate a revised funding soundness restoration plan, including any automatic risk-sharing mechanisms implemented, the adoption of an actuarially determined contribution structure, and other benefit or contribution mechanisms. The public retirement system must provide written notice to the associated governmental entity when an actuarial valuation indicates the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years. Requires the governing body and the governmental entity to jointly formulate a funding soundness restoration plan when the system's funding period: 1) has exceeded 30 years for three consecutive annual actuarial valuations or two consecutive annual actuarial valuations when a system conducts the valuations every two or three years; or 2) effective September 1, 2025: a) exceeds 40 years; or b) exceeds 30 years and the funded ratio of the system is less than 65 percent. The bill makes additional changes to funding soundness restoration plan requirements. Effective September 1, 2021.

HB 769 (Middleton) TWIA Administration – Prohibits the Texas Windstorm Insurance Association board of directors from voting on a proposed rate increase if there is a vacancy on the board that has existed for at least 60 days at the time the vote is to be taken. In addition, prohibits TWIA from purchasing reinsurance from an insurer or broker involved in the catastrophe modeling used to determine the probable maximum loss for the period covered by the reinsurance or when adopting rates. Effective September 1, 2021.

HB 3564 (Paul) TWIA Certificate of Compliance – prohibit the Texas Department of Insurance from rescinding a certificate of compliance for a completed or ongoing improvement for purposes of coverage under a policy issued by the Texas Windstorm Insurance Association after issuing the certificate. That prohibition applies to certificates that are in effect or issued on or after the bill's effective date. Effective immediately, unless vetoed by the Governor.

HB 3807 (Hunter) Lifeguards and signs on public beaches – Requires a municipality, county, or the Texas Parks and Wildlife Department, from Memorial Day to Labor Day, to provide: 1) occupied lifeguard towers or mobile lifeguard units on each side of each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within the corporate boundaries; or a single occupied lifeguard tower or mobile lifeguard unit at each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within the corporate boundaries if the single

tower provides an unobstructed view of both sides of the structure; and (2) post within 100 yards of each side of each lifeguard tower or mobile unit signs clearly describing the dangerous water conditions that may occur near the structure. A municipality is authorized to suspend or alter the duties imposed under the bill during dangerous weather conditions or emergency operations. Effective September 1, 2021

SB 877 (Hancock) Municipal building inspections during a declared disaster – Certain third-party individuals are authorized to perform building inspections for compliance with municipal building and rehabilitation codes or related municipal regulations in an area subject to a disaster declaration by the governor. Individuals must meet the following criteria: person is not the owner of the building or a person whose work is the subject of the inspection; the person is: 1) certified to inspect buildings by the International Code Council, 2) employed as a building inspector by the municipality in which the building is located; employed as a building inspector by another political subdivision and approved by the municipality where the building is located; or a licensed engineer. The person who performs the inspection must provide notice to the municipality of the inspection no later than 30 days following the inspection. A municipality is prohibited from collecting an inspection fee related to the inspection of a building performed under the bill's provisions. Effective immediately, unless vetoed by the Governor.

SB 63 (Nelson) Property Appraisal System Improvements – Allows the Comptroller to conduct appraisal review board training courses through distance training and education. Establishes term limits and modifies eligibility criteria for appraisal district board of directors. Requires the chief appraiser to act on an exemption or special appraisal application within 90 days after the latter of the date the applicant first qualified or the date the applicant provides the necessary information for the chief appraiser to determine the applicant's right to the exemption. The chief appraiser has 30 days after the application is filed to request additional information. The chief appraiser must include a full explanation for any denials or modifications in the written notice. Requires the appraisal review board to schedule a protest hearing as soon as practicable, but not later than the 90th day after approval of the appraisal records. the bill requires the appraisal review board to send an electronic reminder stating the date, time, and place of a protest hearing in counties with population of 120,000 or more. The chief appraiser is prohibited from offering evidence or argument in support of a reason for modifying or denying an exemption or special appraisal application other than a reason stated in the notice delivered to the applicant unless certain criteria are met. The bill provides a tax exemption for solar or wind-powered devices primarily for production and distribution of energy for on-site use regardless of whether the person is the owner of the real property on which the device is installed or construction. Effective September 1, 2021.

HB 988 (Shine) Appraisal Review Boards – Requires appraisal review boards (ARBs) to adopt hearing procedures that conformed with model procedures issued by the comptroller and would establish a process for property owners to request limited binding arbitration to compel an ARB or chief appraiser of an appraisal district to take certain action. Effective immediately, unless vetoed by the Governor.

HB 3665 (Ordaz Perez) Definition of "bicycle"; rules of the road – The bill expands the definition of "bicycle" for purposes of the rules of the road to include a device capable of being

ridden solely using human power and that has two or more wheels, at least one of which is more than 14 inches in diameter, and a belt, chain, or gears. The bill also specifies: 1) the definition excludes a moped; and 2) includes certain modifications necessary for adaptive riding by persons with disabilities. Effective September 1, 2021.

SB 1055 (Huffman) Motor vehicle accidents within crosswalks – Passed House, as amended; Passed Senate – expands the duties of a driver in the Transportation Code and provide penalties for motor vehicle drivers who inflict bodily injury or serious bodily injury to a pedestrian or individual who is lawfully utilizing a crosswalk in a roadway. Additionally, this bill adds definitions of motor and electric vehicles that are commonly used in crosswalk areas into statute. Effective September 1, 2021.